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State Bar No. 003441 (Inactive Status)

IN THE SUPREME COURT STATE OF ARIZONA

In the Matter of PETITION TO)	
AMEND RULE 45)	R-05-0034
)	
)	COMMENT ON PETITION
_____)	
_____)	

I am commenting in opposition to the proposed amendment to Supreme Court Rule 45 relating to members returning from inactive status. The stated reason for the proposed amendment to Rule 45 is to close a “loophole” that allowed members to jump from active to inactive status to avoid annual MCLE requirements. This amendment erroneously assumes that every member who changes to inactive status did it for the purpose of avoiding the annual MCLE requirements, and unfairly imposes a severe punishment on members with valid reasons for being on inactive status.

That assumption of a “loophole” in Rule 45 is unwarranted. The unethical conduct of the few members who want to circumvent the rules should be addressed directly. With the proposed approach, this Court will be punishing all who have changed to inactive status for legitimate reasons with

the hope of deterring unethical conduct of those attempting to avoid MCLE requirements.

The logic behind the proposed amendment would be equivalent to ticketing all drivers using the Loop 101 because some of them speed. Such a program *may* deter speeders from using the freeway, but would *definitely* (and unfairly) punish drivers using the freeway in a safe and lawful manner. Similarly, the proposed amendment to Rule 45 might deter a few members who want to circumvent the MCLE requirements, but in the process would punish the great number of innocent members on inactive status who were not even aware of this “loophole” until notified of the proposed change to Rule 45.

If the State Bar and this Court believe there is a problem of members circumventing the MCLE requirements by going momentarily inactive, the Bar and this Court should address that problem directly. The Bar should not recommend, and this Court should not approve, a rule change that might indirectly address the problem but is guaranteed to adversely affect a large number of innocent members who had valid reasons to change to inactive status other than the avoidance of MCLE.

Stricter enforcement of the provisions governing the practice of law would be a greater deterrent and would more directly target members attempting to avoid MCLE requirements. Members who go inactive simply to

circumvent MCLE requirements should be easy to spot. Those members are not interested in leaving the practice of law, and would likely want to keep their clients. Presumably those members would go inactive at the end of the fiscal year (late June), and reactivate at the beginning of the next fiscal year (early July of the same year). They are unlikely to notify their clients to find other counsel, close their office and quit the practice of law during their inactive period. If they continue to hold themselves out as lawyers while on inactive status (even if they take this opportunity for a vacation), are they not violating rules of the Supreme Court governing the practice of law? It should be easy to devise rules to target that group, and not punish all who have truly left the practice of law.

Under the proposed amendment, the only punishment for the aforementioned unethical conduct would be to have to fulfill the MCLE requirement that the member tried to avoid. Conversely, there is a significant effect on members who have actually been inactive for an extended period. For example, in my case, I left the private practice of law to join the Arizona Department of Revenue. I have not practiced law for over two and one-half years. If I were to return to the practice of law, the proposed amendment would require me to make up 30 hours of MCLE, plus the 15 hours for the year of reactivation, solely because other members play games to avoid MCLE. And

since members who try to circumvent MCLE were only inactive for a short time, they would only have to make up the 15 hours they tried to circumvent, not 30 hours.

There is also the issue of fairness and notice. The proposed rules were not in effect when I went inactive. At the minimum, the proposed amendment should be narrowed as much as possible to minimize the (presumably unintended) impact on members who had legitimate reasons to go on inactive status. This Court might consider giving the amendment prospective application, and/or narrowing the application of the proposed amendment only to those members who were on inactive status for a period of three months or less.

Undoubtedly, there are alternatives far better than the current proposal. I therefore respectfully request that this Court reject the current proposed amendment to Rule 45.

DATED this 15th day of May, 2006.

A handwritten signature in black ink, appearing to read "Frank L. Migray", written over a horizontal line.

Frank L. Migray

A copy of this comment has been mailed this
15th day of May, 2006, to:

Robert B. Van Wyck, Chief Bar Counsel,
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288
(602) 252-4804

A handwritten signature in black ink, appearing to read "F.L. Migray", written over a horizontal line.

Frank L. Migray